IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9686 OF 2004

M/s. Manickchand Ratanchand Oswal ..Petitioner.

Vs.

Hasmukhalal Ambalal Shah ..Respondent.

...

Mr. Y.S. Jahagirdar, Senior Advocate with Mr. S.A. Rajeshirke for the Petitioner.

Mr. A.K. Abhyankar, Senior Advocate with Mr. N.V. Mhatre for the Respondent.

....

CORAM: DR. D.Y. CHANDRACHUD, J.

11th July, 2006.

P.C. :

Rule, by consent of Counsel made returnable forthwith. With the consent of Counsel and at their request, taken up for final hearing.

1. A decree for eviction on the ground of the bonafide requirement of the landlord was confirmed in appeal by the Additional District Judge, Pune on 28th April, 1994. The Petition filed by the tenant, being Writ Petition 1341 of 1994, was allowed by consent of the parties and the matter was remanded back to the

appellate court. Consent Minutes of the order were filed before this Court by the parties in pursuance of which liberty was granted to the parties to adduce oral and documentary evidence on commission. That exercise was undertaken by the parties before the Appellate Court. The ground for eviction in the present case is that the landlord requires the premises for enabling his two sons to set up an engineering design and consultancy business. The entire discussion of the Appellate Court is contained in paragraph 11 of the judgment which reads as follows :

> "11. In order to appreciate the submissions of learned counsel appearing for the parties I have perused the evidence placed on record by the parties earlier as well as after remand of the matter carefully. From the evidence on record it is seen that, the plaintiff on oath has deposed before the Court that he and his 2 sons are engineers and intending to start the business of engineering designs and consultancy and also to start teaching classes in the suit premises and for that he requires the suit premises reasonably and bonafide for his personal use and occupation. During the pendency of the suit the defendant and his sons have acquired residential properties. Therefore, it can safely be said that, in the evidence of plaintiff there is nothing on record to show that, the sons of the plaintiff who are engineers are carrying on any independent business. Whatever properties acquired by the plaintiff during the pendency of the suit are not commercial properties. Therefore, it cannot be said that, the plaintiff has acquired any suitable commercial premises during the pendency of the

> suit. Same is the thing with the defendant as there is also no evidence to show that, the defendant has acquired any commercial premises during the pendency of the suit. Considering the fact that, 2 sons of the plaintiff who are engineers are unemployed and not doing any independent business, in my opinion, there is no hesitation to hold that, there is some need to the plaintiff to get suit premises. Now it is settled law that if the plaintiff shows that, there is some need for getting tenanted premises, the eviction decree should be passed unless the defendant proves that, the plaintiff does not require the suit premises reasonably and bonafide. In the present case since both the sons of the plaintiff are unemployed and not carrying on any independent business, I find that, the plaintiff has not only proved that, there is some need to the plaintiff for getting the suit premises but also the plaintiff has proved that, he requires the suit premises genuinely in order to help his sons to carry on business of their choice and to earn their livelihood. There is no satisfactory evidence on behalf of defendant to find that, the plaintiff does not require the suit premises reasonably and bonafide. Therefore, I find that, the plaintiff has proved that, he requires suit premises reasonably and bonafide for his personal use and occupation. Accordingly I answer point No.1 in the affirmative."

2. Counsel appearing for the Petitioner has submitted that after the earlier order of remand, the parties adduced additional evidence before the Appellate Court. The following admissions were made during the course of the cross examination of the landlord :

> "My sons have purchased the property bearing C. T. S. No.927-B, Budhwar Peth, in the year 1989. At the time of purchase, the said property consisted of ground floor plus first floor and an attic. (At this time the Learned Advocate for the Plaintiff objected that the said fact is nowhere pleaded in the Written statement or the Additional Written Statement). The land beneath the said property is approx. 980 Sq. Fts. and 1.5 F. S.I. is available there. The old structure is not in existence today and its place the new construction is raised in the year 2001. There is about 1900 Sq. Fts. construction in the said property and owned by my sons. My sons have not entered into any agreement in writing with anybody, in respect of the said property."

3. There is merit in the submission that the Appellate Court ought to have dealt with the evidence in its entirety in its impugned order. It is clear, in the facts and circumstances of the case, that the Appellate Court overlooked a material part of the evidence. It cannot be suggested that the evidence which has been overlooked is not material or relevant to the question as to whether the premises are reasonably and bonafide required by the landlord. In the circumstances, in as much as there has been a clear and patent overlooking of material aspects of the evidence on the record, I am of the view that an order of remand is warranted. The

exercise of the supervisory jurisdiction under Article 227 is therefore necessitated.

4. In order to facilitate a fresh determination, the impugned order of the Additional District Judge dated 16th August, 2004 is quashed and set aside. Civil Appeal 638 of 1993 is restored to the file of the Additional District Judge, Pune. The parties shall appear before the Additional District Judge for necessary directions on 31st July, 2006. The Appellate Court shall endeavour to dispose of the appeal expeditiously after hearing the parties, preferably within a period of six months thereafter. The Petition is accordingly disposed of. There shall be no order as to costs.